

July 15, 2004

RESPONSE TO: May 13, 2004 IDWR Letter RE:  
Mitigation for ground water use pursuant to IDAPA 37.03.12.050

SUBMITTAL OF: 2004 Participants Alternative Mitigation Plan (04-PAMP)

Dear IDWR Director:

Approved *Gary Spackman*  
7/21/04

**Preface**

The subscribers to this 2004 Participants Alternative Mitigation Plan (04-PAMP) submit the following statement of position. It appears very unlikely at this time the Advisory Board, Watermaster, and Patrons of Water District 34 are going to reach a consensus on any matter relating to (Rule 50) and potential mitigation remedies to the senior surface calls that have been made this year. We believe this is most unfortunate for all water users of the Big Lost River Basin. Although a consolidated plan would be the most effective, the participants of this alternative plan feel they must proceed with their own alternate mitigation plan so as to avoid the adverse consequences of curtailment of their junior groundwater diversions. If Water District 34 were to adapt and implement an approved mitigation plan subsequent to the submission of this plan, the participants would willingly support and participate in such a plan in lieu of this alternative plan. The focus of the 04-PAMP will be a direct proportionate augmentation to valid senior surface calls, rather than a general river augmentation, in conjunction with the following conditions.

**Recital of Issues Associated with Conjunctive Administration in Basin 34**

1. Proper regulation of all senior surface water rights in compliance with limiting elements and remarks contained in the SRBA partial decrees, and the curtailment of irrigation acres which are solely irrigated with inferior surface water rights decreed pursuant to Section 42-1426 of the Idaho Code, and assurance that all mitigation water supplies are used only on lands which are entitled to such benefits.
2. Participants recognize the need for and encourage the use of temporary transfers pursuant to the emergency drought declarations made in Butte and Custer counties. However, such transfers must not result in the expansions or enlargement of "combined or stacked" water rights, especially when such transfers involve the senior surface water rights calling for the curtailment of, or mitigation from, junior ground water rights.
3. Correct accounting procedures within the water district and irrigation district (i.e. determining availability of natural flow supplies and priority calls by properly recognizing river inflows, losing/gaining river reaches, and excess river losses charged against storage allocations conveyed to the lower reaches of the river system). See 1991 Ralston Report p.6-7.

4. The initiation of a joint IDWR/Water District 34/Participant study to determine the actual river depletion caused by ground water pumpage within river reaches or impact zones, as well as other contributing factors. See 1991 Ralston Report, Statement of the Problem p.1-2 (Currently the Rule establishes a 13% depletion factor for all wells within the basin regardless of well location, river reach, or cyclical river flow levels within those reaches.)
5. A commitment from the Director of IDWR that he will not prematurely declare the flows of the Big Lost River to be futile in the lower reaches (Moore Diversion) of the basin. While the major cause of declining river flows is the drought, additional significant causes in declining river flows which result in futile call attempts from upstream users are their own new irrigated acres from expanded use of existing surface rights, the conversion to more efficient sprinkler systems, and the impact of ground water pumping in the immediate upper reach areas of the basin. Water users from these areas seem to be the most strident resisters of conjunctive management, yet they are the greatest supporters of the futile river call. A futile call would make all surface water supplies unavailable to the most senior surface rights within the lower river reaches, including those that are now making a call on ground water rights, even if mitigation supplies augmented river flows. Other injurious causes of declining river flows must be regulated and/or remedied. The relationship of futile calls and mitigation plans cannot be overstated!
6. Consideration of the subscriber's contribution of "rotated into credit" and/or released "storage allocations" as described in (Rule 40.02) which were used to "charge" the river system at the commencement of the 2004 irrigation season as partial mitigation. These two combined supplies total in excess of 1685AF in 2004. This "charging of the river system" made it possible to deliver senior natural flow rights (in priority with available river flows) to all reaches of the river below the Mackay Reservoir. These types of water supply contributions should be considered as a portion of the 6110 AF mitigation supply in the broader river augmentation mitigation plan as described in (Rule 50).
7. This proposed mitigation plan, if approved, would only be binding upon the participants for the current year 2004, and only if IDWR continues to require the balance of ground water users in the basin to be curtailed or submit and receive approval of their own respective mitigation plan(s).

#### **Components of 04-PAMP**

1. The surface water rights called for by N. Sowards are of such inferior priority (1887, 1892, and 1896) that it appears from a review of historic data, no river supply would be available to fill any portion of these rights this year even in the absence of ground water pumping. No mitigation or augmentation is proposed for these delivery calls at this time.

2. Surface water rights called for by Jensens are of 1883 priority and appear to have received some water supply historically even in drought conditions. However, Jensens' entitlement is still limited by the SRBA partial decreed elements and remarks contained in their respective water right descriptions. It appears the total maximum diversion rate of these three rights totals 6.53 cfs for the use on 294 acres. The limiting annual volume appears to be slightly more than 1030 AF for that same acreage. It also appears two of the Jensens are choosing to augment their own surface right(s) pursuant to (Rule 50.03) by diverting from combined ground water rights and may be doing so to the extent they are actually exceeding the legally combined rate of diversion. All surface and ground water supply quantities which are diverted by Jensens and appurtenant to the 294 acres will need to be quantified and verified by IDWR personnel prior to any mitigation supplies actually being made available so proper amounts of augmentation supplies can be determined.

Participants of this proposed mitigation plan are not assuming they have the burden of the entire annual volume quantity entitlement less what Jensens have already diverted or will divert from available surface and ground water sources this year. The participants' burden is only their proportionate share of the annual volume deficit burden that all ground water users in the basin bear. To ensure the availability of those proportioned replacement volume quantities, the participants have an agreement with one of the participating ground water users who owns a well in the vicinity of the conveyance canal used by Jensens.

3. If this mitigation plan is approved by the Director, the participants will do the following:

- a. Submit a Temporary Change Application to IDWR requesting a change in the place of use for the "Mickelsen Well" located at (4N 26EBM Sec 4 NE NW NE under water right nos. 34-07179 and 34-07201).
- b. Control and ensure quantities diverted from this mitigation well are in compliance with the limitations of Jensens' annual volume entitlement less any combined water quantities that Jensens have previously diverted from river supplies and their own supplemental well(s). If it is needed to determine what the amounts of these quantities are, Jensens will provide supporting documentation (i.e. electrical consumption ledgers, ditchrider field notes, etc.) to the IDWR administrators prior to receiving any mitigation water supplies.
- c. Bear the cost for providing these replacement supplies by proportionally distributing them among subscribing participants.
- d. Provide to the Director of IDWR the "initial subscriber's" and "post approved plan subscriber's" Names, Addresses and Water Right Identification Numbers.

Respectfully Submitted  
(See list of subscribers)



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

July 21, 2004

Mitchell Sorensen  
3871 W 2500 N  
Moore, ID 83255

On July 16, 2004, you submitted a draft mitigation plan to the Idaho Department of Water Resources (IDWR). The draft mitigation plan was submitted in response to an order requiring mitigation by ground water users within Water District No. 34 issued by the Director of IDWR on July 11, 2004. The order required that mitigation be provided by July 22, 2004 or holders of ground water rights would be required to cease and desist diversions of ground water on July 23, 2004.

On July 19, 1994, we conversed by telephone about the provisions of the draft mitigation plan and you submitted a revised plan with attached participant signatures on July 21, 2004. I've reviewed the provisions of the proposed plan that proposes a temporary transfer of the place of use for a ground water right owned by Mickelsen Properties LLC. The new place of use will be the land irrigated by L. Vaughn Jensen, Jack Jensen, and Jay Jensen.

**This letter approves the proposed mitigation plan.** I wrote, "approved" on the plan and added my signature to document the approval. I am sending a signed copy back to you. The following are clarifications to some of the language of the plan.

Based on our discussions, the portion of the plan titled "Recital of Issues Associated with Conjunctive Management in Basin 34" identifies issues that we must earnestly try to resolve during the months leading up to the next Water District No. 34 annual meeting. Some of these issues will require multi-year attempts to resolve. We agreed that resolution of these issues is not a pre-requisite to implementation of the proposed plan. IDWR commits to work with the water users in Water District No. 34 to address these issues.

Issue no. 3 calls for future studies. IDWR will attempt to gather, analyze, and refine data to better understand the hydrology of the Big Lost River Basin within the limits of its resources. IDWR recognizes the need for better information about the water in the Big Lost River Basin. Nonetheless, IDWR will not commit to study efforts that cannot be supported by current budgets and staff. If further appropriations are approved for further study, IDWR will willingly participate.

Issue no. 6 suggests the possible recognition of "rotation" storage or storage contributed to "charge" the river as part of the mitigation required by the Distribution Rules in Water District No. 34. IDWR believes that at least some portion of the water released from storage could be recognized as mitigation water. The language in the recitals strongly assumes recognition of all of the storage water, but IDWR will only interpret the language as an issue needing further resolution.

Proposed Mitigation Plan Approval  
July 21, 2004  
Page 2

Paragraph 2 of the section titled "Components of 04-PAMP" states that IDWR personnel will quantify and verify the quantities of water Jensens have diverted prior to mitigation "actually being made available." Paragraph 3.b. of "Components of 04-PAMP" states that, if needed, "Jensens will provide supporting documentation (i.e. electrical consumption ledgers, ditchrider field notes, etc.) to the IDWR administrators prior to receiving any mitigation water supplies." IDWR does not believe it is absolutely necessary that all of these documents must be fully submitted and analyzed prior to delivery of mitigation water. IDWR could alternatively assume unknown facts most favorably to the ground water users providing mitigation until Jensens submit the information. For instance, if power usage information is not provided, IDWR would have to assume that Jensens diverted water continuously from their well.

Thank you again for proposing a workable plan. IDWR assumes that you will continue to notify us of water users participating in your plan so IDWR can assure them that they can continue to divert and use ground water.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Spackman". The signature is fluid and cursive, with the first name "Gary" being more prominent.

Gary Spackman  
Water Allocations Bureau Chief

Cc: Robert Duke, Watermaster; Water district 34  
IDWR Eastern Region